

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DANNY TOLIVER,	:	CIVIL ACTION
	:	
Plaintiff,	:	02-4554
	:	
v.	:	
	:	
CITY OF PHILADELPHIA, <u>et al.</u> ,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this day of March, 2003, upon consideration of the Defendant City of Philadelphia's Motion for Summary Judgment Pursuant to Federal Rule of Civil Procedure 56(c) (Document No. 10), it is hereby ORDERED that the Motion is GRANTED.¹

¹ According to Fed. R. Civ. P. 56(e), "[w]hen a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing there is no genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party." However, the failure of plaintiff "to respond to this motion is not necessarily fatal; summary judgment may only be granted if the court determines that the movant is entitled to judgment as a matter of law." Bernhardt v. Hygrade, 1998 U.S. Dist. LEXIS 10031, at *1 (E.D. Pa. June 30, 1998). Since the Plaintiff failed to respond to the motion, "the Court is limited to a consideration of the pleadings filed by the parties and the exhibits filed" by the movants. Abdulaziz v. City of Philadelphia, 2001 U.S. Dist. LEXIS 16972, at *7 (E.D. Pa. Oct. 18, 2001).

As of the date of this Order, Plaintiff has not responded to Defendant City of Philadelphia's Motion for Summary Judgment. Plaintiff has not presented any evidence beyond the allegations set forth in his pleadings. According to this Court's Scheduling

BY THE COURT:

J. CURTIS JOYNER, J.

Order dated September 18, 2002, discovery was to be completed by December 12, 2002. Defendant has not presented any evidence other than pointing to the utter lack of evidence presented by Plaintiff. Defendant, however, is not required to support its motion with "affidavits or other similar materials negating the opponent's claim." Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). In fact, Defendant's evidentiary burden "may be discharged by 'showing' -- that is, pointing out to the district court -- that there is an absence of evidence to support the nonmoving party's case." Id. at 325. "Regardless of whether the moving party accompanies its summary judgment motion with affidavits, the motion may, and should, be granted so long as whatever is before the district court demonstrates that the standard for the entry of summary judgment, as set forth in Rule 56(c), is satisfied." Id. at 323.

Although Plaintiff has not responded to Defendant's Motion, we find that granting summary judgment is appropriate because Defendant City of Philadelphia is entitled to judgment as a matter of law. Even viewing all facts and inferences in a light favorable to Plaintiff, we find that there is nothing in the record beyond the pleadings that supports a claim against Defendant. Without any record evidence before the Court in support of Plaintiff's 42 U.S.C. § 1983 claim, we find Defendant is entitled to judgment as a matter of law and GRANT Defendant's Motion for Summary Judgment. Therefore, all claims against Defendant City of Philadelphia are dismissed with prejudice.